

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





# TRANSCRIPT OF RECORD.

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## Court of Appeals, District of Columbia

APRIL TERM, 1910.

No. 2134.

719

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No. 13, SPECIAL CALENDAR.

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UNITED STATES *EX REL.* LEWIS B. THOMSON,  
APPELLANT,

*vs.*

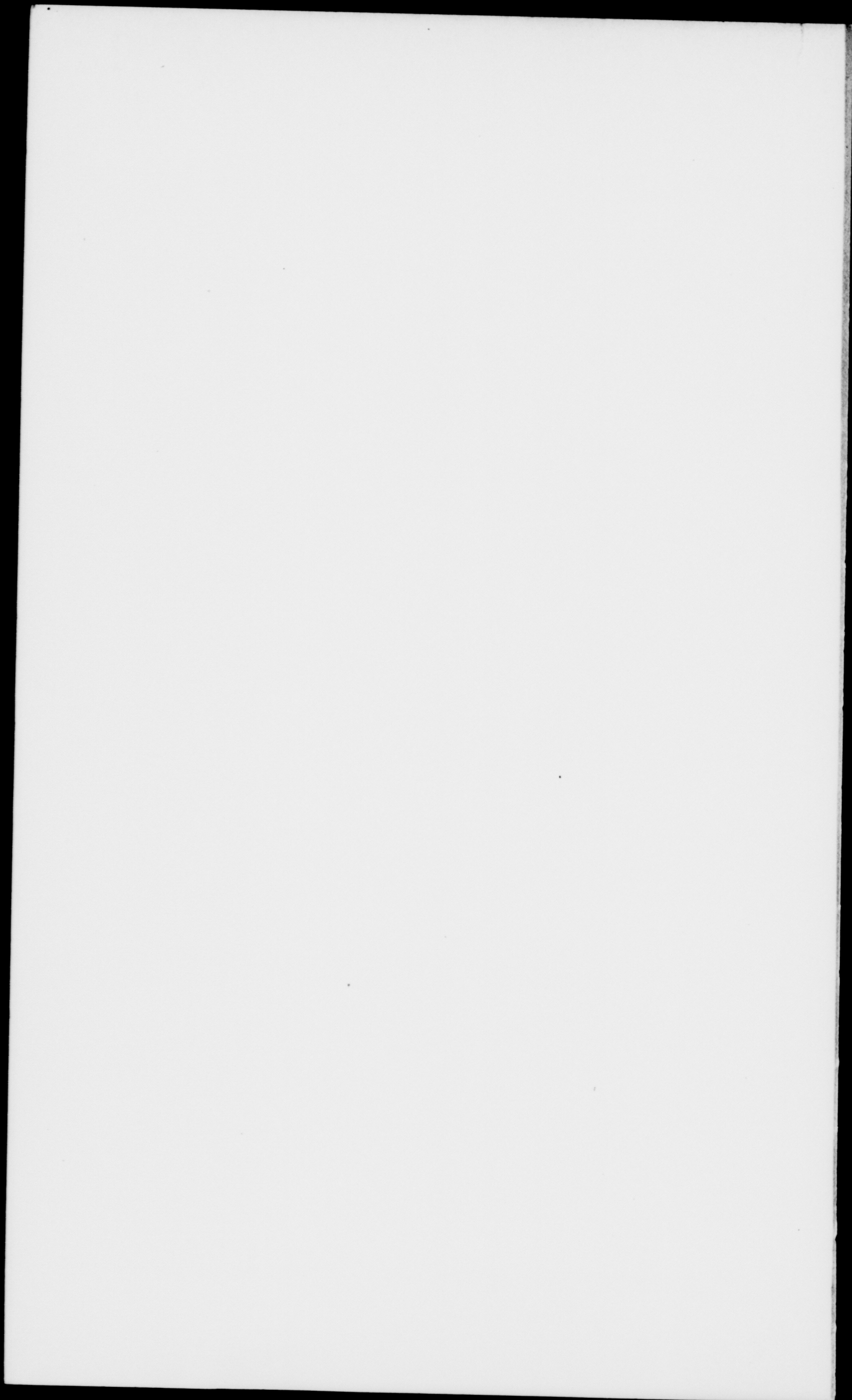
J. B. GREGG CUSTIS, GEORGE C. OBER, EDWARD J.  
COLLINS, BENJAMIN F. LEIGHTON, AND L. CABELL  
WILLIAMSON.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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FILED MARCH 11, 1910.





# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

APRIL TERM, 1910.

No. 2134.

No. 13, SPECIAL CALENDAR.

UNITED STATES *EX REL.* LEWIS B. THOMSON,  
APPELLANT,

*vs.*

J. B. GREGG CUSTIS, GEORGE C. OBER, EDWARD J.  
COLLINS, BENJAMIN F. LEIGHTON, AND L. CABELL  
WILLIAMSON, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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# In the Court of Appeals of the District of Columbia.

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No. 2134.

UNITED STATES ex Rel. LEWIS B. THOMSON, Appellant,

vs.

J. B. GREGG CUSTIS et al.

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*a* Supreme Court of the District of Columbia.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON, Petitioner,

vs.

J. B. GREGG CUSTIS, GEORGE C. OBER, EDWARD J. COLLINS, BENJAMIN F. LEIGHTON, and L. CABELL WILLIAMSON, Defendants.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition for Mandamus.*

Filed Dec. 11, 1909.

In the Supreme Court of the District of Columbia.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON, Petitioner,

vs.

J. B. GREGG CUSTIS, GEORGE C. OBER, <sup>Edward J. Collins,</sup> [ELBERT C. Benson,]\* Benjamin F. Leighton, and L. Cabell Williamson, Defendants.  
G. E. S. Dec. 15, '09.

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[\*Name enclosed in brackets erased in copy.]

1—2134A



The petition of Lewis B. Thomson respectfully represents:

1. That he brings this petition in his own right on account of the matters and things hereafter set forth.

2. That the defendants J. B. Gregg Custis, George C. Ober,

Edward J. Collins,

G. E. S. [Elbert C. Benson,]\* Benjamin F. Leighton, and L.

Dec. 15, '09. Cabell Williamson, constitute the Board of Medical Supervisors of the District of Columbia, charged

by law (Act of Congress approved June 3, 1896, 29 Stat. L. 198, as amended by Act approved January 19, 1905, 33 Stat L. 609-610) with the issuance of licenses to practice medicine and surgery in the District of Columbia under the conditions provided for by law, and they are sued herein that they may be commanded and required to issue a license to petitioner, to which he is entitled as hereinafter set forth.

2 3. That under and in pursuance of the provisions of Sec.

8a of the Act to Regulate the Practice of Medicine &c. in the District of Columbia, your petitioner, on August 10, 1909, filed a written application, duly verified, with the defendants, constituting the Board of Medical Supervisors of the District of Columbia, for a license authorizing him to practice medicine and surgery in the District of Columbia, a true copy of which application is hereto annexed, marked "Exhibit A", and made a part hereof; and that your petitioner also tendered and paid to the defendants with said application Fifteen (\$15) Dollars, the fee fixed and required of him by said Board.

4. That on, to-wit, the 16th day of November 1909, your petitioner received from the defendants a communication dated November 15, 1909, advising petitioner of the rejection of his aforesaid application—

"because of the fact that at an examination of candidates for licenses to practice medicine and surgery in the District of Columbia held in October 1906 you attained a general average of 60.51% only."

a true copy of which communication is hereto annexed, marked "Exhibit B", and made a part hereof.

5. That on, to-wit, the 19th day of November 1909, your petitioner's attorney applied to the defendant George C. Ober, the secretary of the aforesaid Board of Medical Supervisors, to examine the papers in petitioner's case, but petitioner's attorney was informed by said defendant Ober that it would be necessary for him to make a written request in that connection; that thereupon, later in the day, petitioner's attorney prepared and mailed such written request, a true copy of which is hereto annexed, marked "Exhibit C", and made a part hereof. That thereafter, on, to-wit, the 23rd day of November 1909, your petitioner's attorney received from

the defendant Ober a communication, of which a true copy is hereto annexed, marked "Exhibit D," and made a part hereof. That petitioner's attorney finally succeeded, however, in examining petitioner's aforesaid application on, to-wit,

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[\*Name enelosed in brackets erased in copy.]



the 26th day of November 1909, without waiting for the next meeting of the Board referred to in the last aforesaid communication of defendant Ober.

6. That thereafter, on the 11th day of December 1909, shortly before the making of this petition, petitioner returned to the aforesaid Board of Medical Supervisors the check for \$12 rebate enclosed with the communication of November 15, 1909 already referred to, a true copy of the letter of petitioner's attorney returning said check being hereto annexed, marked "Exhibit E," and made a part hereof.

7. Petitioner is advised and believes, and therefore avers, that the defendants are under a plain legal duty to issue him said license, and that he has a plain legal right to the same, and that their unlawful withholding of his license has resulted, and continues to result, in great damage to petitioner, depriving him of the right to practice medicine and surgery in the District of Columbia; and that, there being a plain duty on the part of the defendants to issue to petitioner the license applied for, petitioner is entitled to relief by this petition. Petitioner is further advised that it is unnecessary to aver at this time any of the facts concerning the examination held in October 1906, upon which the defendants rely for their rejection of petitioner's application herein involved, and also that it is unnecessary at this time to make any averments as to the motives of the defendants in refusing petitioner's license, because petitioner is advised that, whatever may have been the character of the examination held in 1906, and whether legally or  
 4 illegally conducted, and whatever may have been the motives of the defendants in refusing petitioner's license because of the examination held in October 1906, as a matter of law he is clearly entitled to his license by reciprocity, notwithstanding any rating that may have been given him at any time or anywhere in an examination held at a time previous to the issuance of his license in the State of Maryland and his two years' practice thereunder.

Wherefore, the premises considered, petitioner prays:

I. That the Writ of Mandamus may issue unto the said J. B.

Edward J. Collins,

G. E. S. Gregg Custis, George C. Ober, [Elbert C. Benson,]\*

Dec. 15, '09. Benjamin F. Leighton, and L. Cabell Williamson,

commanding them to issue to your petitioner Lewis

B. Thomson a license of the Board of Medical Supervisors of the District of Columbia authorizing petitioner to practice medicine and surgery in the District of Columbia.

II. To this end that a rule may forthwith issue to the said J. B.

Edward J. Collins,

G. E. S. Gregg Custis, George C. Ober, [Elbert C. Benson,]\*

Dec. 15, '09. Benjamin F. Leighton, and L. Cabell Williamson,

requiring them to show cause at an early day, to be

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[\*Name enclosed in brackets erased in copy.]



named in the rule, why a mandamus should not be issued for the purposes aforesaid.

And your petitioner will ever pray.

LEWIS B. THOMSON, *Petitioner.*

GEO. E. SULLIVAN,

*Attorney for Petitioner, Lewis B. Thomson.*

DISTRICT OF COLUMBIA, *To wit:*

I, Lewis B. Thomson, being first duly sworn, do on my oath depose and say, that I am the petitioner in the foregoing Petition by me subscribed; that I have read said Petition, and know the contents thereof; and that the matters and things therein stated on personal knowledge are true, and those stated on information and belief I believe to be true.

LEWIS B. THOMSON.

Subscribed and sworn to before me this 11th day of December A. D. 1909.

[NOTARIAL SEAL.]

WALTER C. ENGLISH,  
*Notary Public in and for the District of Columbia.*

6

"EXHIBIT A."

Office of the Board of Medical Supervisors of the District of Columbia.

*Application for Physician's License.*

Class B.

Application No. 91.

Name of Applicant, Lewis Beecher Thomson.  
Received August 10, 1909.

—— —, *Secretary.*

See license No. — Class B.

Remarks: —.

The above to be filled in by the Secretary.

To the Board of Medical Supervisors of the District of Columbia:

I hereby apply to the Board of Medical Supervisors for a license to practice medicine and surgery in the District of Columbia, to be issued without examination, upon the basis of license No. —, issued July 19, 1907 by the medical licensing board of Maryland.

1. My full name is Lewis Beecher Thomson.
2. Date of birth Feb. 4, 1849.
3. Usual residence Silver Spring and Linden, Montgomery Co., Maryland.
4. Duration of residence at above address. At above county address from the year 1888 to date of this application except the sev-



eral years during college terms, and the taking of post graduate course in Washington, D. C. and Baltimore, Md.

5. Education prior to commencing study of medicine. Graded Schools. Academic School. Also studied under private tuition, Academic courses. Was also office assistant to P. C. Samson M. D., Syracuse, N. Y. during one entire school vacation in my youth.

7 6. Time spent in medical study in or out of medical schools:

a. From March 1864 to June 1867 in reading various medical works.

b. From March 1885 to March 1887 as a clerk in office of Surgeon Gen'l U. S. Army.

c. From Sept. 1886 to April 1887 as a 1st year student Georgetown University Medical Department which I passed the required examinations.

d. From Oct. 1, 1900 to April 1901 Medical School Georgetown University.

From Oct. 1, 1901 to April 1902, Ditto

e. From " " 1902 to May 1903, Ditto

" " 1903 " " 1904, Ditto

f. From " " 1904 " " 1905, Maryland Medical College.

" " " " " " " more or less on duty at the

said College Hospital, known as Franklin Square Hospital, also its Maternity Hospital. (During the last 2 years in Georgetown I took only half the studies on acct. of ill health.)

7. Degrees or certificates of attendance upon lectures in medicine have been received as follows:

I hold a certificate of date Sept. 1904 from Georgetown University for faithful attendance for a first, second and third year college course in its medical department.

I hold a degree of M. D. from the dean and faculty dated May 1905 of the Maryland Md. College, Baltimore, Md.

8. I have practiced medicine at the following places and during the following periods:

Location.	Time.
Silver Spring, Maryland, and the adjacent villages of Takoma, Sligo, Woodside, Rockville, Lyttonville, Linden, Forest Glen, also country places (not villages) near by.	From July 27, 1907, to date of this application.

I enclose herewith fee of fifteen dollars.

8 The following evidence as to my moral character, mental condition, and drug habits; as to when and how my license to practice medicine in the State of Maryland was obtained; as to the duration of my practice of medicine in said State; and as to the privileges accorded to licentiates of the Board of Medical



Supervisors therein; is respectfully submitted and is made a part of this application.

Signature of applicant Lewis Beecher Thomson:

DR. L. B. THOMSON,  
*Silver Spring, Md.*

Lewis Beecher Thomson, personally known to me, being duly sworn, deposes and says that the statements contained in the foregoing application are true and that he is the identical person the history of whose medical education and practice is contained therein and who is duly authorized to practice medicine in the State of Maryland by virtue of the license therein described.

[NOTARIAL SEAL.]

H. P. HOWARD, JR.,  
*Notary Public.*

July 27, 1909.  
Date.

*Vouchers as to Moral Character, etc.*

One voucher from the chartered State or County Medical Society nearest the residence of the applicant, or two vouchers from personal acquaintances, should be submitted in the following form.

*Medical Society's Voucher.*

The following voucher must be executed when the applicant intends to rely upon the chartered State or County Medical Society for evidence of good moral character, etc.

To the Board of Medical Supervisors of the District of Columbia:

This is to certify that Dr. Lewis Beecher Thomson residing in Silver Springs, Maryland, whose signature appears above, is  
9 a member in good standing in the Montgomery County (Maryland) Medical Society, which said society is duly chartered in accordance with the laws of this State and is the chartered medical society nearest the residence of said Dr. Lewis Beecher Thomson.

It is certified further that said Dr. Lewis Beecher Thomson has been actually engaged in the practice of medicine in the State of Maryland since July 1907.

In witness whereof, we, the President and Secretary of the Montgomery County Medical Society of the State of Maryland have affixed our signatures and the seal of the said society on the 27th day of July 1909.

O. M. LINTHICUM, M. D., *President.*  
JOHN L. LEWIS, M. D., *Secretary.*

(This Soc. has no seal. J. L. L. Sec't'y.)



*Certificate as to Issue of State License, etc.*

(To be Executed by Licensing Board.)

To the Board of Medical Supervisors of the District of Columbia:

This is to certify (1) that Lewis Beecher Thomson whose signature appears above, is the holder of an outstanding, unrevoked license to practice medicine in the State of Maryland, said license, numbered —, having been issued July 19, 1907.

(2.) That said license was issued in accordance with the laws of this State as follows: that is to say,

After submission of diploma and after regular examination. Said license was issued after the applicant had submitted to this board a diploma conferring on him the degree of doctor of medicine, issued after four years' study of medicine by The Maryland  
10 Medical College located at Baltimore, Maryland, on May 9, 1905, and after regular written examination covering the following subjects; Anatomy, histology, physiology, hygiene, chemistry, toxicology, medical jurisprudence, pathology, bacteriology, materia medica, therapeutics, surgery, diseases of the eye and the ear, obstetrics, gynecology, and practice of medicine, in which examination the applicant attained a general average of 75 pr. ct. out of a possible one hundred.

That a person holding an outstanding unrevoked license to practice medicine and surgery in the District of Columbia, issued under conditions corresponding to those set forth in the preceding paragraph, as having formed the basis of the issue of the license therein described, will upon presentation to the Board of Medical Examiners of the State of Maryland of satisfactory evidence of good moral character, and upon the payment of a fee of fifteen dollars, be licensed without examination to practice medicine in the State of Maryland.

HERBERT HARLAN, *President.*  
J. McP. SCOTT, *Secretary.*

Herbert Harlan, personally known to me, being duly sworn, deposes and says that he is the President of the Board of Medical Examiners of Maryland, and that the foregoing certificate is true to the best of his knowledge and belief.

[NOTARIAL SEAL.]

JAS. W. LAIDLER,  
*Notary Public.*

Aug. 9th, 1909.  
Date.

Dr. J. McP. Scott, personally known to me, being duly sworn, deposes and says that he is the Secretary of the Board of Medical Examiners of Maryland, and that the foregoing certificate is  
11 true to the best of his knowledge and belief.

[NOTARIAL SEAL.]

GEO. B. STONEBRAKER,  
*Notary Public.*

Aug. 3, 1909.  
Date.



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## "EXHIBIT B."

Office of the Board of Medical Supervisors of the District of Columbia, Washington.

NOVEMBER 15TH, 1909.

Dr. Lewis Beecher Thomson, Silver Spring, Maryland.

DEAR SIR: Your application for a license to practice medicine in this District without examination by virtue of your right to practice in the State of Maryland was presented to the Board at a recent meeting. As a result of the consideration of said application I was instructed to inform you that the Board could not grant you a license because of the fact that at an examination of candidates for licenses to practice medicine and surgery in the District of Columbia held in October 1906 you attained a general average of 60.51% only.

I was further instructed to return the fee deposited by you with your application less three dollars to cover the expense to which the Board has been put by reason of the filing of your application. A check for twelve dollars is enclosed. Kindly sign accompanying receipt and return the same to me.

Respectfully,

GEO. C. OBER, M. D.,  
*Secretary.*

(Two inclosures.)

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## "EXHIBIT C."

George E. Sullivan, Attorney at Law, Fendall Building, Washington, D. C.

Nov. 19, 1909.

Board of Medical Supervisors of the District of Columbia, Washington, D. C.

GENTLEMEN: In accordance with the wishes of my client, Dr. Lewis Beecher Thomson, that I examine all the papers in connection with, and including, his application for medical license which, he learns through a communication from your Board dated November 15th, 1909, has been denied, and also the papers in connection with, and including, his prior application filed in 1906 and referred to in the said communication of your Board, I beg to request that I be advised as to the time and place when I may see said papers. I would like to see them at your earliest convenience, and within a short time thereafter my client will decide whether to accept or return the \$12 check enclosed with the aforesaid communication from your Board.

Thanking you in advance, I am  
Very truly yours,

GEO. E. SULLIVAN.



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## "EXHIBIT D."

Office of the Board of Medical Supervisors of the District of Columbia, Washington.

NOVEMBER 22, 1909.

Mr. Geo. E. Sullivan, Fendall Building, Washington, D. C.

DEAR SIR: I have to acknowledge the receipt of your letter of the nineteenth instant and to inform you that it will be referred to the Board at its next meeting.

Respectfully,

GEO. C. OBER, M. D.,  
Secretary.

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## "EXHIBIT E."

George E. Sullivan, Attorney at Law, Fendall Building, Washington, D. C.

DEC. 11, 1909.

Board of Medical Supervisors of the District of Columbia, Washington, D. C.

GENTLEMEN: My client, Dr. Lewis Beecher Thomson, having elected to stand upon his rights under his application for medical license filed with your Board August 10, 1909, he has directed me to herewith return to you the check for \$12 rebate enclosed with your communication of Nov. 15, 1909.

Very truly yours,

GEO. E. SULLIVAN.

(One enclosure.)

16

*Rule to Show Cause.*

Issued Dec. 13, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON, Petitioner,  
vs.

J. B. GREGG CUSTIS, GEORGE C. OBER, ELBERT C. BENSON, BENJAMIN F. LEIGHTON, and L. CABELL WILLIAMSON, Defendants.

Upon consideration of the petition of Lewis B. Thomson filed in the above-entitled cause, it is, by the Court, this 13th day of December A. D. 1909, ordered that J. B. Gregg Custis, George C. Ober, Elbert C. Benson, Benjamin F. Leighton, and L. Cabell Williamson, defendants in the above cause, show cause on the 16th day of December A. D. 1909 at 10 o'clock a. m., why a writ of mandamus should not be issued, as prayed for in said petition, requiring said



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UNITED STATES EX REL. LEWIS B. THOMSON vs.

defendants to issue to the petitioner a license to practice medicine and surgery in the District of Columbia.

By the Court.

WRIGHT, *Justice*.

17

*Order Granting Leave to Amend.*

Filed Dec. 15, 1909.

In the Supreme Court of the District of Columbia.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON, Petitioner,  
vs.

J. B. GREGG CUSTIS et als., Defendants.

On motion of petitioner, through his attorney George E. Sullivan, it is, by the Court, this 15th day of December A. D. 1909, ordered that leave be, and it is hereby, granted petitioner to amend his petition in the above cause by striking out the name "Elbert C. Benson," as a party defendant, wherever it appears in said petition, and by inserting Edward J. Collins as a new party defendant in the place and stead of said Elbert C. Benson.

By the Court.

WRIGHT, *Justice*.

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Issued Dec. 15, 1909.

In the Supreme Court of the District of Columbia.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON, Petitioner,  
vs.

J. B. GREGG CUSTIS, GEORGE C. OBER, EDWARD J. COLLINS, BENJAMIN F. LEIGHTON, and L. CABELL WILLIAMSON, Defendants.

*Rule to Show Cause.*

Upon consideration of the petition of Lewis B. Thomson filed in the above-entitled cause, and as amended the 15th day of December 1909 with leave of the Court, It is, by the Court, this 15th day of December A. D. 1909, ordered that Edward J. Collins, one of the parties defendant in the above cause, show cause on the 16th day of December A. D. 1909 at 10 o'clock A. M., why a writ of mandamus should not be issued, as prayed for in said petition, requiring the defendants to issue to the petitioner a license to practice medicine and surgery in the District of Columbia.

By the Court.

WRIGHT, *Justice*.



*Answer of Defendants to Rule to Show Cause.*

Filed Dec. 16, 1909.

In the Supreme Court of the District of Columbia.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON, Petitioner,  
vs.  
J. B. GREGG CUSTIS, GEORGE C. OBER, ELBERT C. BENSON, BENJAMIN F. LEIGHTON, and L. CABELL WILLIAMSON, Defendants.

Now come the respondents and for answer to the rule to show cause issued herein respectfully show to the court as follows:—

1. They admit the allegations of paragraph 1 of said petition.

2. They admit the matters of fact set forth in paragraph 2 except that Elbert C. Benson is no longer a member of the Board, having died before the bringing of this suit, and his place has been taken by E. J. Collins, M. D.

3-6. Respondents admit the matters of fact set forth in paragraphs 3 to 6 inclusive.

7. Answering paragraph 7 these respondents deny that it is their duty to issue the license mentioned therein or that the petitioner is entitled to the license by reason of any reciprocity existing with the State of Maryland or any other state.

8. Further answering said petition these respondents say that the reason given in paragraph 4 of the said petition for the refusal of  
important

the said license was one of the [immediate]\* reasons for refusing the same, and that conditions did not exist for issuing the  
20 said license by reason of any reciprocal relations with the State of Maryland. That paragraph C, section 8-a of the Act of January 19, 1905 provides, among the conditions set forth for the issuance of a license under such reciprocal relations:—

“Nor unless the applicant acquired the right to practice medicine and surgery in such jurisdiction under conditions equivalent to those with which he would have had to comply in order then to have practiced medicine and surgery in the District of Columbia.”

That the said petitioner did not acquire the right to practice medicine and surgery in the State of Maryland under conditions equivalent to those with which he would have had to comply in order, at any of the times hereinafter mentioned, to practice medicine and surgery in the District of Columbia. *That in the rules formally adopted by the Board of Medical Supervisors of the District of Columbia, and which have been in force at all of the dates herein-after mentioned, are the following requirements;—an applicant must attain a general average of seventy-five out of a possible one hundred in the examination to which he is subjected in this District;*

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[\*Word enclosed in brackets erased in copy.]



if having attained such general average of seventy-five and not falling below sixty in more than one subject he is entitled to a license under the rules; that if having attained a general average of seventy-five he falls below sixty in any one branch, he is given at once a re-examination upon that particular branch and if he attains an average of sixty or over in that branch he is given his license. If he fails to make sixty or better his license is refused. If, however, having attained a general average of seventy-five he falls below sixty in more than one branch, he is not entitled to re-examination in those branches but his license is refused. But, however, if he falls below  
 21      forty-five in one or more branches, he is not entitled to a license nor to an immediate re-examination in those branches irrespective of what may be his general average and his license is refused. That this standard has been, at the dates and times hereinafter set forth and is now, maintained in this jurisdiction, and this Board does not recognize reciprocity [in\*] any state with

nor [in]\* the State of Maryland where the requirements are less severe.

That the said petitioner was examined by the Board of Medical Examiners in the State of Maryland in June 1905 to determine his fitness as to his medical education, and obtained the following ratings: Anatomy 79, Surgery 80, Pathology 75, Obstetrics 92, Practice 70, Chemistry 35, Mat. Med. 76, Therapeutics 80 and Physiology 50.

That the requirement in Maryland was seventy-five and the petitioner failed having received an average of a little over seventy: that in or about September, 1906, he made application to the Board of Medical Supervisors of the District of Columbia to take the examination here and was examined in October 1906 and attained a general average of 60.51, which was a complete failure, and did not entitle the applicant to any re-examination, but under the rules his license was necessarily refused; that in June, 1907 he was re-examined by the Board of Medical Examiners of Maryland in three subjects, to wit: Practice, in which he received seventy-five, Chemistry seventy-five, and Physiology seventy-five, and he was granted a license to register in the State of Maryland.

*That under the rules in force in the District of Columbia, he could not have obtained here the license to practice medicine and surgery, and this Board has never admitted to practice any applicant under these conditions, nor has it any reciprocal relations with Maryland or any other state under which or by means of which an applicant so*  
 22      *licensed in such state was admitted to practice or recognized*

*as fit to practice medicine and surgery in the District of Columbia. This Board has determined as a matter of fact that the requirements in the state of Maryland under the circumstances above set forth are not equivalent to those which existed in the District of Columbia at any of the times mentioned or which exist at the present time, and with which the applicant would have*

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[\*Word enclosed in brackets erased in copy.]



had to comply in order to practice medicine and surgery in the District of Columbia.

Copy of the letter received by respondent George C. Ober, from the Secretary of the Board of Medical Examiners of Maryland under date of November 23, 1909, is attached hereto and prayed to be read as part of this return.

Having fully answered these respondents pray to be hence dismissed with their costs in this behalf incurred.

J. B. GREGG CUSTIS.  
GEO. C. OBER.  
E. J. COLLINS.  
BENJ. F. LEIGHTON.  
L. CABELL WILLIAMSON.

E. H. THOMAS,  
F. H. S.,

*Att'y for Respondents.*

DISTRICT OF COLUMBIA, ss:

Personally before me appeared J. B. Gregg Custis, George C. Ober,  
<sup>E. J. Collins</sup>  
[Elbert C. Benson,]\* Benjamin F. Leighton, and L. Cabell Williamson, constituting the Board of Medical Supervisors of the District of Columbia, who being duly sworn say they have read the above answer by them subscribed and know the contents thereof, and that the matters and things therein stated on informations and belief they believe to be true and the matters and things therein stated of their personal knowledge are true.

J. B. GREGG CUSTIS.  
GEO. C. OBER.  
E. J. COLLINS.  
BENJ. F. LEIGHTON.  
L. CABELL WILLIAMSON.

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Subscribed and sworn to before me this 16 day of December, 1909.

J. R. YOUNG, *Clk.*  
By HARRY BINGHAM,  
*Ass't Clk.*

24

HAGERSTOWN, MD., Nov. 23, 1909.

Dr. George C. Ober, Sec'y Board of Med. Supervisors, Washington, D. C.

DEAR DOCTOR: We are in receipt of yours of 22nd, and. thank you very much for the information concerning the application of Dr. John Underwood Raymond, for recognition of D. C. license. It covers the case thoroughly. In reply to your request for dates on which Dr. Lewis B. Thomson was examined by our Board and his ratings in each branch, advise that our records show that Dr.

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[\*Name enclosed in brackets erased in copy.]



L. B. Thomson was examined in June 1905 examination; ratings in Anatomy 79; Surgery 80, Pathology 75, Obstetrics 92, Practice 70, Chemistry 35, Mat. Med. 76, Therapeutics 80 and Physiology 50. He failed at this examination to receive an average of 75. The average received was 70. Under our law he was entitled to reexamination in branches in which he had failed and in the June 1907 examination he was reexamined in Practice in which he received 75, Chemistry 75 and Physiology 75 and he was granted a license to register.

Yours truly,  
(Signed)

J. MCP. SCOTT, *Sec'y.*

25 In the Supreme Court of the District of Columbia.

Filed Dec. 20, 1909. J. R. Young, Clerk.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON, Petitioner,  
vs.

J. B. GREGG CUSTIS, GEORGE C. OBER, EDWARD J. COLLINS, BENJAMIN F. LEIGHTON, and L. CABELL WILLIAMSON, Defendants.

*Demurrer to Respondents' Return.*

The petitioner says that the respondents' return is bad in substance.

GEO. E. SULLIVAN,  
*Attorney for Petitioner.*

NOTE.—The following points of law will be argued at the hearing of this demurrer:

1. That the return in no way justifies the action of the respondents in refusing petitioner's license, and shows that the ground upon which they based their refusal of petitioner's license, and of which he was notified, was untenable, and that the further ground now urged by them is also untenable.

2. That the requirement that an applicant shall have acquired the right to practice in the other jurisdiction *under conditions equivalent* to those with which he would have had to comply in order then to have practiced in the District, refers to the substantial conditions of the statute, namely, as to the period of study leading up to the degree of doctor of medicine, and thereafter undergoing an examination of a fundamental character testing his fitness to practice medicine and surgery, and has no reference to modes of procedure, or rules or regulations in reference to procedure.

3. That the alleged rules and regulations referred to in the return are not pleaded, but conclusions only are averred, and therefore they cannot be considered for any purpose.

4. That the return does not set up any matter of fact, but is, in substance, a statement simply of an erroneous and unwarranted conclusion of law as to the statutory requirement of "conditions equivalent."



26 *Order Overruling Demurrer with Leave to File Replication.*

Filed Dec. 21, 1909.

In the Supreme Court of the District of Columbia.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON; Relator,  
vs.

J. B. GREGG CUSTIS et als., Respondents.

On consideration of the petition filed in this cause, the rule to show cause issued thereon, the return of the respondents thereto, and the demurrer of relator to said return, and after argument by counsel for the respective parties, it is, by the Court, this 21st day of December A. D. 1909, adjudged and ordered that said demurrer to said return be, and it is hereby, overruled, with leave to relator to file a replication or replications to said return forthwith.

WRIGHT, *Justice.*

27 In the Supreme Court of the District of Columbia.

Filed Dec. 21, 1909. J. R. Young, Clerk.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON, Petitioner,  
vs.

J. B. GREGG CUSTIS, GEORGE C. OBER, EDWARD J. COLLINS, BENJAMIN F. LEIGHTON, and L. CABELL WILLIAMSON, Defendants.

*Replications.*

1. The petitioner denies each and every allegation of the respondents' return, save as the same may appear in the petition.

2. And for a further replication, the petitioner says that the examination which he underwent before the Board of Medical Examiners of Maryland, and as the result of which he secured his license in Maryland, was fundamental in character and tested his fitness to practice medicine and surgery.

GEO. E. SULLIVAN,  
*Attorney for Petitioner.*

28

*Joinder of Issue.*

Filed Dec. 23, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMPSON  
vs.

J. B. GREGG CUSTIS et al.

The defendants join issue on the first replication, filed herein. As to the second, or further, replication, filed herein, defendants



demur thereto, and say that the matter set forth therein is immaterial; that the plea is uncertain, and is neither a plea by way of traverse or by way of confession and avoidance; and, further that the same was filed without leave of the Court first had, and without cause being shown.

E. H. THOMAS,  
F. H. S.,  
*Corporation Counsel, for Defendants.*

[Endorsed:] At Law. No. 52211. U. S. ex rel. Lewis B. Thomson vs. J. B. Gregg Custis et al. Joinder of issue on 1st replication, and demurrer to second replication.

29 *Order Sustaining Motion to Strike Out, &c.*

Filed Jan. 7, 1910.

In the Supreme Court of the District of Columbia.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON  
vs.  
J. B. GREGG CUSTIS et als.

This cause came on to be heard this 7th day of January A. D. 1910 upon the demurrer of the respondents to the relator's second replication, and also upon the motion of the relator to strike out filed in respect to said demurrer, and was argued by counsel; on consideration whereof, it is, by the Court, adjudged and ordered that said motion to strike out be, and it is hereby, sustained, and it is further adjudged and ordered that said demurrer, as so modified by said motion to strike out, be, and it is hereby, sustained.  
WRIGHT, *Justice.*

30 *Motion to Fix Day for Trial.*

Filed Jan. 21, 1910.

In the Supreme Court of the District of Columbia.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON  
vs.  
J. B. GREGG CUSTIS et als.

Now comes the relator, Lewis B. Thomson, by his attorney, and moves the Court to fix an early day, pursuant to Sec. 1277 of the Code, for the trial of the issue joined herein.

GEO. E. SULLIVAN,  
*Attorney for Relator.*



31

Copy.

Filed Feb. 4, 1910. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON

vs.

J. B. GREGG CUSTIS et als.

*Affidavit in Support of Relator's Motion to Fix Day for Trial of Issue Joined.*

DISTRICT OF COLUMBIA, To-wit:

I, George E. Sullivan, being first duly sworn, depose and say that I am the attorney for the relator in the above cause, and that I make this affidavit for the purpose of showing to the Court that, notwithstanding the lapse of time which has occurred in this case, the relator has been responsible for none of it, that he has not waived in anywise his right to a speedy trial herein, and that the circumstances are such as to entitle him to the very earliest possible trial that can be fixed consistently with the business of the Court;

That I was present and ready on behalf of relator, and so announced to the Court, on December 16, 1909, the return day of the rule issued against respondents herein, but the Court postponed the hearing until December 20, 1909;

That on December 20, 1909 I was again present and ready on behalf of relator, and so announced to the Court, and that I have been on hand and ready to proceed at every stage of the case;

That ever since the joinder of issue herein by the respondents filed on December 23, 1909, and also prior thereto, I have sought diligently, by repeated requests, to have the defendant Ober, the secretary of the defendant Board, permit my inspection of certain

32 papers etc. in his office relating to the alleged 1906 examination of relator and also of the alleged rules and regulations relied upon in respondents' return as a justification for refusing relator's license, so that I might proceed to trial upon the issue joined herein; but that it was the morning of January 20, 1910 before I was permitted to see the papers etc. relating to the alleged 1906 examination, and said Ober even then refused to permit any inspection of the alleged rules and regulations referred to in respondents' return, stating that he had been told by counsel not to, but to refer me back to him (said counsel), who, he said, had told him that he had himself already declined when requested by me for such inspection; that said Ober finally, on that morning, after a telephonic conversation with said counsel, gave me a printed circular which he stated contained the alleged rules and regulations: that this being all I could get from said Ober upon the subject, I



decided not to have the trial of the issue joined herein further delayed, and, on that afternoon, namely, January 20, 1910, I notified respondents' counsel to meet me in Court the following morning to fix the day for the trial of the issue joined; that on that following morning, to-wit, January 21, 1910, said respondents' counsel informed me over the telephone that he could not come to the Courthouse that day, but agreed to meet me Monday morning, January 24, 1910, for the purpose of fixing a day for the trial; that I thereupon informed the Court that said counsel could not come to the Courthouse on that day and asked the Court if he would give us a few moments on Monday morning following for the purpose of fixing the day for trial, but the Court declined to so agree, stating that a written motion would have to be made and put upon the regular Friday motion calendar; that on the very next motion day, to-wit, Friday, January 28, 1910, I was present and  
 33 ready on behalf of relator, and so announced to the Court, in connection with my written motion made pursuant to the requirement of the Court and regularly placed upon the motion calendar for that day, but the Court postponed the hearing thereon until February 4, 1910.

GEO. E. SULLIVAN.

Subscribed and sworn to before me this 31st day of January A. D. 1910.

[NOTARIAL SEAL.]

WALTER C. ENGLISH,

*Notary Public in and for the District of Columbia.*

34

*Motion to Strike Out and for Judgment.*

Filed Feb. 4, 1910.

In the Supreme Court of the District of Columbia.

At Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON

v.

J. B. GREGG CUSTIS et al.

Now come the defendants, by their attorney, and move the court,—

1. To strike out the first replication filed herein for that the same is vague, indefinite and uncertain and does not sufficiently apprise the defendants of any matters to be tried.

2. To strike out the joinder of issue thereon.

3. For judgment on the record.

4. That the petition for a writ of mandamus be dismissed.

EDWARD H. THOMAS,

F. H. S.,

FRANCIS H. STEPHENS,

*Attorneys for Respondents.*

(Endorsed:) The motion for judgment on the pleadings, as expressed in ground 3 herein, is granted. W.



35 Filed Mar. 9, 1910. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON

vs.

J. B. GREGG CUSTIS, GEORGE C. OBER, EDWARD J. COLLINS, BENJAMIN F. LEIGHTON, and L. CABELL WILLIAMSON.

This cause came on for consideration by the Court the 4th day of February A. D. 1910, upon the motion of relator, Lewis B. Thomson, and affidavit in support thereof, to fix a day for trial of the issue joined herein, and also upon the motion of respondents filed herein February 4, 1910, and was argued by counsel; and thereupon, upon consideration thereof, It is, by the Court, this 9th day of March A. D. 1910, adjudged and ordered that so much of said motion of respondents as prays judgment on the record be, and it is hereby, sustained, that the prayer of the petition herein be, and it is hereby, denied, and that the defendants go hence without day and recover from the relator, Lewis B. Thomson, their costs to be taxed by the Clerk.

And from this judgment and order the relator, Lewis B. Thomson, appeals in open Court to the Court of Appeals of the District of Columbia, and the bond on such appeal is hereby fixed at one hundred dollars, the same to operate as a supersedeas.

By the Court:

WRIGHT, *Justice*.

36

*Memorandum.*

March 10, 1910.—Appeal bond approved and filed.

*Directions to Clerk for Preparation of Transcript of Record.*

Filed Mar. 10, 1910.

In the Supreme Court of the District of Columbia.

Law. No. 52211.

UNITED STATES ex Rel. LEWIS B. THOMSON

vs.

J. B. GREGG CUSTIS et als.

The Clerk of said Court, in making up the transcript of record on appeal in the above cause, will please include the following:

1. Petition, affidavit, and exhibits filed Dec. 11, 1909.
2. Rule entered Dec. 13, 1909, omitting Marshal's return).



3. Order allowing, and amendment of petition, by striking out name of Elbert C. Benson and inserting Edward J. Collins. (Dec. 15, 1909)

4. Rule entered Dec. 15, 1909, (omitting Marshal's Return)

5. Answer of respondents and exhibit filed Dec. 16, 1909)

6. Demurrer to answer filed Dec. 20, 1909.

37 7. Order overruling demurrer, with leave to plead, (Dec. 21, 1909)

8. Replications filed Dec. 21, 1909.

9. Joinder in issue on 1st replication and demurrer to 2nd replication.

10. Order of Jan. 7, 1910, sustaining demurrer to 2nd replication.

11. Motion to fix day for trial, (omitting notice), filed Jan. 21, 1910.

12. Affidavit filed Feb. 4, 1910.

13. Motion to strike out and for judgment filed by defendants Feb. 4, 1910.

14. Order of March 9, 1910, entering judgment against relator. Appeal noted, and amount of bond fixed.

15. Notation as to filing and approval of appeal bond.

16. And this designation.

GEO. E. SULLIVAN,  
*Attorney for Relator.*

E. H. THOMAS,  
*Attorney for Respondents.*

38 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 37 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 52211 at Law, wherein United States, ex rel. Lewis B. Thomson is Petitioner and J. B. Gregg Custis et als. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 11th day of March, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2134. United States ex rel. Lewis B. Thomson, appellant, vs. J. B. Gregg Custis et al. Court of Appeals, District of Columbia. Filed Mar. 11, 1910. Henry W. Hodges, clerk.



